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APPLICATION NO.	FILING DATE	FIRST NAMED	INVENTOR		ATTORNEY DOCKET NO.	
98/918,325	U8/26/97	*BARULAY		W	2997-1-2-1-1	
		IM21/0410	\neg		EXAMINER	<u></u>
MICHAEL L 10	JMPKINS	THE TYPE		WEIER,	Α	
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				DATE MAILED	-	
					04/10/98	

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



Office Action Summary

Application No. **08/918,325**

Applicant(s)

Barclay

Examiner

Anthony Weier

Group Art Unit 1761



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1. Claims 30, 37-39, 46-48, and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following lack antecedent basis in claim 30: "the average" and "the same genus".

Alternative expression (e.g. and/or) are improper (see claims 37, 38, 46, 47, and 51).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Ise or Hagemeister et al.

Either one of Ise (col. 15, line 52- col. 16, line 2) or Hagemeister et al discloses a milk product (i.e. from cows) having an increased amount of omega-3 highly unsaturated fatty acid.

It is noted that the instant claims carry many process limitations. However, determination of patentability is based on the product itself. As such, the burden shifts to applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of the claimed product. In re Thorpe, 227 USPQ 964.

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 29-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Hagemeister et al or Ise taken together with either one of Ellenbogen et al or Long.

The following is being applied in the alternative if Applicants show that the products of Hagemeister et al and Ise are different from those claimed (see rejection above).

Both Hagemeister et al and Ise are silent concerning the omega fatty acid source.

However, such source is well known as taught, for example, by either one of Ellenbogen et al or Long. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same as an art recognized source of omega fatty acids to be used as an alternative source for producing the products set forth in either one of Hagemeister et al or Ise.

Both Hagemeister et al and Ise are silent concerning the use of said omega fatty acid source as a feed supplement, said feed supplement being coated with protein to protect it from degradation in the rumen, and to use dry grain which has been prepared by extrusion. However, it is notoriously well known to feed cows dry grain in a shaped form (e.g. pelletizing) and to employ feed supplements. Furthermore, it is well known to encapsulate feed supplements (e.g. vitamins) in proteinaceous material to protect same as called for in the instant claims. Therefore, it would have been further obvious to have included said feed supplement in dry grain and encapsulated in protein as an art recognized vehicles for feeding supplements to cows.

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The claims call for the particular media to be used for growing the organisms used to create said omega fatty acids (e.g. fermentation). However, the particular choice of growth media would have been within the purview of a skilled artisan, and it would have been further obvious to have employed same as a matter of choice depending, for example, on the cost of same or availability.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is (703) 308-3846.

ANTHONY J. WEIER PRIMARY EXAMINER GROUP 1300

Anthony Weier

March 30, 1998